

STATE OF MICHIGAN
COURT OF APPEALS

DANIELLE C. SHEPHERD,
Plaintiff-Appellee,

v

TIMOTHY M. SHEPHERD,
Defendant-Appellant.

UNPUBLISHED
December 28, 2004

No. 255358
Oakland Circuit Court
LC No. 02-670136-DM

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce ordering him to pay child support based on an imputed earning ability. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's only issue on appeal is his contention that the trial court erred in imputing income to him when calculating child support. Defendant asserts that the trial court failed to evaluate the factors delineated in 2003 MCSF 2.10(F) and that his actual earning history is contrary to the trial court's ruling regarding imputation of income and the amount imputed. This Court reviews a trial court's award of child support for abuse of discretion. *Burba v Burba*, 461 Mich 637, 647; 610 NW2d 873 (2000). The trial court's findings of fact are reviewed for clear error. *Kosch v Kosch*, 233 Mich App 346, 350; 592 NW2d 434 (1999).

As noted by the Michigan Supreme Court in *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998), statutes require that "the child support formula 'shall be based upon the needs of the child and the actual resources of each parent.'" *Id.*, citing MCL 552.519(3)(a)(vi). In applying this requirement, decisions issued by this Court have expanded the definition of "actual resources" to encompass a parent's unexercised ability to pay child support. See, *Rohloff v Rohloff*, 161 Mich App 766; 411 NW2d 484 (1987); *Heilman v Heilman*, 95 Mich App 728; 291 NW2d 183 (1980). A child support order can be calculated based upon an unexercised ability to earn. *Olson v Olson*, 189 Mich App 620, 621-622; 473 NW2d 772 (1991).

However, the determination of a trial court to impute income to a parent having an unexercised ability to pay is not unfettered or without guidelines. Such a determination requires specific findings by a trial court, including but not limited to an individual's work history, level of education, skills, capacity to work, employment opportunities, and consistency or diligence of effort in seeking employment. *Sword v Sword*, 399 Mich 367, 378-379; 249 NW2d 88 (1976),

overruled on other grounds *Mead v Batchlor*, 435 Mich 480, 498; 460 NW2d 493 (1990). The Michigan Child Support Manual formalizes the criteria and factors upon which a trial court's imputation of income must be based. 2003 MCSF 2.10(F).

We find there was an adequate basis for imputing income to defendant. The trial court considered the factors and criteria required prior to imputing income to defendant in the calculation of child support. The trial court's ruling was based on defendant's prior demonstrated ability to earn \$40,000 per year as a personal chef. Defendant acknowledged during this time period securing additional income by engaging in supplementary self-employment performing personal catering services. Thus, the evidence was not speculative, and supports the trial court's decision to impute income in the amount of \$45,000. The trial court's determination to impute income, in the amount specified, was based on defendant's demonstrated ability to earn the level of income imputed to him. Accordingly, the trial court did not abuse its discretion in awarding this amount for child support to plaintiff.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly